

ASSEMBLY BILL

No. 1923

Introduced by Assembly Member Daly

February 19, 2014

An act to amend Section 14977.1 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1923, as introduced, Daly. State government: contracts: public records.

Existing law, the California Public Records Act, requires state and local agencies to make public records available upon receipt of a request that reasonably describes an identifiable record not otherwise exempt from disclosure, upon the payment of fees to cover costs.

Existing law authorizes the Department of General Services to enter into exclusive or nonexclusive contracts on a bid or negotiated basis with the manufacturers and suppliers of single source or multisource drugs, as specified. Existing law authorizes those contracts to include price discounts, rebates, refunds, or other strategies aimed at managing escalating prescription drug prices.

This bill would exempt the financial terms of a contract executed pursuant to this authorization from disclosure under the California Public Records Act.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14977.1 of the Government Code is
2 amended to read:
3 14977.1. (a) Notwithstanding any other ~~provision of~~ law, the
4 Department of General Services may enter into exclusive or
5 nonexclusive contracts on a bid or negotiated basis with
6 manufacturers and suppliers of single source or multisource drugs.
7 The department may obtain from those manufacturers and
8 suppliers, discounts, rebates, or refunds based on quantities
9 purchased insofar as permissible under federal law. Contracts
10 entered into pursuant to this chapter may include price discounts,
11 rebates, refunds, or other strategies aimed at managing escalating
12 prescription drug prices.
13 (b) Contracts under this chapter shall be exempt from Chapter
14 2 (commencing with Section 10290) of Part 2 of Division 2 of the
15 Public Contract Code.
16 (c) *The financial terms of a contract executed pursuant to this*
17 *section shall be confidential and shall be exempt from disclosure*
18 *under the California Public Records Act (Chapter 3.5 (commencing*
19 *with Section 6250) of Division 7 of Title 1).*
20 SEC. 2. The Legislature finds and declares that Section 1 of
21 this act, which amends Section 14977.1 of the Government Code,
22 imposes a limitation on the public's right of access to the meetings
23 of public bodies or the writings of public officials and agencies
24 within the meaning of Section 3 of Article I of the California
25 Constitution. Pursuant to that constitutional provision, the
26 Legislature makes the following findings to demonstrate the interest
27 protected by this limitation and the need for protecting that interest:
28 It is in the state's financial interest to keep pharmaceutical pricing
29 information confidential when there is a contract between the
30 Department of General Services and a pharmaceutical company.
31 As is the case with the existing parallel provision in the Medi-Cal
32 drug program, companies are more aggressive in their pricing,
33 given the size of the California market, when it is clear that neither
34 a competitor nor other payer has access to this information. Other
35 states and companies have sought to retrieve this sensitive pricing

1 information, and a statutory confidentiality protection will ensure
2 that drug companies remain aggressive in their negotiations with
3 the State of California. Additionally, the state will realize further
4 savings when it no longer has to process, and ultimately reject,
5 requests for this information.

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